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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,689	11/26/2003	Lisa W. Lawrence	4435-PA1	8928

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MICHAEL WINFIELD GOLTRY  
4000 N. CENTRAL AVENUE, SUITE 1220  
PHOENIX, AZ 85012

EXAMINER
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THANH, QUANG D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/723,689

Applicant(s)

LAWRENCE, LISA W.

Examiner

Quang D. Thanh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 3, 7 and 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of group I, claims 1-18, and specifically species I including claims 1, 2, 4-6, and 8-14 in the reply filed on 4/25/05 is acknowledged. Accordingly, claims 3, 7, and 15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected invention and species, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Re claims 4 and 8, the limitations "rigid holding means" recited in claim 4 and "one rigid holder" recited in claim 8 are disclosed in the specification on p. 14-15 as a holding bracket 106, which comprises a center portion 118, first 120 and second 132 clamping portions, and does not comprise the rigid bar 104. Thus it is unclear as how a holding bracket comprises a rigid bar since these are two unrelated separate structures? Furthermore, it is not clear to the examiner if "rigid holding means" or "rigid

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holder" refers to holding bracket 106 (according to the specification) or rigid bar 104 (according to claim 4) ?

5. Re claim 10, "said at least one adjustable longitudinal position setter" lacks antecedent basis, and also since this "adjustable longitudinal position setter" is defined as a bar 104 on p. 13 of the specification, therefore it unclear as to how the bar 104 comprises one clamp assembly ?

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2, 4-6, 8, 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Demerais (5,848,980).

8. Re claims 1 and 5, with respect to the functional limitation "for electrically powered percussive massaging" recited in the preamble and paragraph (a), it appears to be a functional language describing the intended use and thus has not been given patentable weight. Therefore, Demerais discloses a massage system (fig. 7)

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comprising: hand holdable massaging means 70 (fig. 7) for electrically-powered massaging (conventional vibrating massage unit capable of providing percussive massaging action, col. 5, lines 1-4); and rigid holding means or holder 15 (fig.7) for rigidly holding said hand-holdable massaging means; wherein said rigid holding means comprises removable holding means 54 for removably holding said hand holdable massaging means 70 (fig. 7)

9. Re claim 2, Demerais discloses further comprising fixed mounting means 52 (fig. 2) for fixedly mounting said rigid holding means.

10. Re claim 4, as best understood, Demerais discloses further comprises a rigid bar 30 having a longitudinal length (fig. 2).

11. Re claim 6, at least one mount 52 (fig. 2) structured and arranged to fixedly mount said at least one rigid holder 15.

12. Re claim 8, at least one rigid bar 30 having a longitudinal length, structured and arranged to set at least one user selected position along said longitudinal length for said at least one hand-holdable massager 70 (fig. 2).

13. Re claims 10-11, as best understood, further comprises at least one clamp assembly 56/57/60 (fig. 7) structured and arranged to adjustably engage said at least one adjustable longitudinal position setter; said at least one clamp assembly comprises at least one first clamp 55 structured and arranged clamp and firmly retain said at least one hand holdable massager (fig. 7).

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14. Claims 1-2, 4-6, 8-11, 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Stone et al. (6,346,088).

15. Re claims 1 and 5, with respect to the functional limitation "for electrically powered percussive massaging" recited in the preamble and paragraph (a), it appears to be a functional language describing the intended use and thus has not been given patentable weight. Therefore, Stone discloses a massage system 11 (fig. 4-5) comprising: hand holdable massaging means M (fig. 5) for electrically-powered massaging ("typical off-the-shelf portable massage machine" capable of providing vibrating, kneading or percussive massaging action, col. 5, lines 9-20); and rigid holding means or holder 47 (mounting means 47, col. 6, lines 55- 67, fig.4-5) for rigidly holding said hand-holdable massaging means; wherein said rigid holding means comprises removable holding means (straps, buckle, col. 6, lines 55- 67, fig. 5) for removably holding said hand holdable massaging means M (fig. 4)

16. Re claims 2, 6 and 9, the system further comprising fixed mounting means 69 (attachment means 69, col. 7, lines 26-49, fig. 4), which is fixedly mounted to a vertical surface (back of a chair, fig. 4)

17. Re claim 4, as best understood, the system further comprises a rigid bar 25 or 83 having a longitudinal length (fig. 4 and 17).

18. Re claims 8, at least one rigid bar 25 or 83 (fig. 4 and 17) having a longitudinal length, structured and arranged to set at least one user selected position along said longitudinal length for said at least one hand-holdable massager M (fig. 4 and 17).

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19. Re claims 10-11 and 13, as best understood, at least one clamp assembly 4.143 (fig. 21, col. 11-12) structured and arranged to adjustably engage said at least one adjustable longitudinal position setter; said at least one clamp assembly comprises at least one first clamp 4.147, 4.157, 4.155 (fig. 21) structured and arranged to clamp and firmly retain said at least one hand holdable massager (fig. 21, col. 11, lines 58-66); said at least one clamp assembly comprises at least one second clamp 4.159, 4.161 (fig. 21) structured and arranged to receive one portion of bar 83 (fig. 24, col. 12, lines 18-26).

20. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Grinner (5,951,501). Grinner discloses a hand-held massaging means 11 (fig. 1-2) for electrically-powered percussive massaging (col. 1, lines 59-61) and also teaches that the massaging means 11 can be mounted on a support or to a door jamb (rigid holding means or holder for rigidly holding said hand-held massaging means) using suitable clamps (removable holding means) for securing it and adjusting the elevation (col. 4, lines 6-11).

***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 2, 4, 6, 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grinner (5,951,501) in view of Elkins et al. (3,865,310) and Vickroy (2,621,968).

23. Re claims 2, 4, 6, 8-9, Grinner discloses the claimed invention except for fixed mounting means, rigid support bar and clamp assembly having first and second clamps. However, Elkins teaches a hand-held massaging means 13 (fig. 1-2) for pulsating massaging (col. 1, lines 13-30) and also teaches that the massaging means 13 can be mounted on a support (fig. 1) using rigid holding means or holder 42 (fig. 2) for rigidly holding said hand-held massaging means, wherein said rigid holding means comprises removable holding means (clamp assembly 60) for removably holding said massaging means 13 (fig. 1, col. 1, lines 38-43). Furthermore, Vickroy also teaches a massaging means S that can be mounted on a rigid support bar M (fig. 1), and rigid holding means or holder C (fig. 2) for rigidly holding massaging means S using suitable clamps 25 and 26 (fig. 3-4) as removable holding means for securing it and adjusting the vertical height (col. 1, lines 1-4) and fixed mounting means (plates 14,15, fig. 2) for fixedly mounting the support bar M to a vertical surface (fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Grinner's reference, to include a support assembly comprising support bar, bracket and clamps, as taught and suggested by Elkins and Vickroy, for the purpose of providing a support assembly suitable to mount the hand-held massager in a manner such that it can be removably secured and adjustably positioned to accommodate the user's height (Vickroy, col. 1, lines 1-4), thus permitting a user to reach muscles not accessible without assistance (Grinner, col. 4, lines 6-11).



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24. Re claims 10-14, as already discussed above, Vickroy discloses at least one clamp assembly C (fig. 2) structured and arranged to adjustably engage said least one adjustable longitudinal position setter M (fig. 2); wherein said at least one clamp assembly comprises least one first clamp 25 (corresponding to 27 in fig. 4) structured and arranged clamp and firmly retain hand-held massager S; wherein said at least one first clamp comprises at least one first substantially circular aperture arranged to receive at least one portion 27 of massager S (fig. 3) and an inside diameter of said aperture is adjustable (by rotation of handle 33, col. 4, lines 8-26); wherein said at least one clamp assembly further comprises at least one second clamp 26 (corresponding to portion M in fig. 4) structured and arranged to receive at least one portion of bar M; wherein said at least one second clamp comprises at least one second substantially circular aperture structured and arranged to receive at least one portion of bar M (best seen in fig. 4), and an inside diameter of said at least one second substantially circular aperture is adjustable (by rotation of handle 33, col. 4, lines 8-26).

### ***Conclusion***

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ramsey '122 discloses a post clamp. Thomson et al. '135 disclose an object clamp.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both regular and After-Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quang D. Thanh  
Patent Examiner  
Art Unit 3764  
(571) 272-4982

May 27, 2005

A handwritten signature in black ink, appearing to read 'Quang D. Thanh', written in a cursive style.